

UNITED STATES OF AMERICA,)	Case No.: 16-CR-1248-GPC
)	
Plaintiff,)	ORDER GRANTING MOTION TO
)	SUPPRESS STATEMENTS
vs.)	
)	[ECF No. 14]
)	
ROSE BURTON,)	
)	
Defendant.)	
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On March 2, 2016, Defendant Rose Burton was arrested following the discovery of methamphetamine in a vehicle that she drove across the United States/Mexico border at the San Ysidro port of entry. Following her arrest, she invoked her right to remain silent. Approximately ten days earlier, on February 20,

1 2016, Burton had provided a statement to FBI agents investigating the kidnapping
2 of Zayki Sandoval. Defendant moves to suppress the February 20th statement as
3 being involuntary and made without Miranda warnings. Def. Mot., ECF No. 14.
4 The United States has opposed. Gov't Opp., ECF No. 20. An evidentiary hearing
5 was held on September 27, 2016. Upon consideration of the moving papers,
6 applicable law and argument of counsel, and for the reasons set forth below, the
7 Court hereby **GRANTS** the motion to suppress.

8 **BACKGROUND**

9 **A. The Kidnapping of Zayki Sandoval**

10 On February 17, 2016, the step-father of Zayki Sandoval contacted the
11 Oceanside Police Department ("OPD") to report that a threatening note was left at
12 his home and that shots were fired at his house the night before. The note read
13 "Give us the money, you dirty bitch" and on the back it said "or there will be
14 consequences." Transcript of Mot. to Suppress Hear'g (Sept. 27, 2016)
15 ("Transcript"), ECF No. 25 at 24. The step-father also reported that Burton had
16 come to his house on February 16, at which time Jose Jimenez, aka "El Primo,"
17 said to Burton, "I know you have our stuff . . . I know you picked it up . . . we want
18 it." *Id.* at 25.

19 On the morning of February 20, 2016, Sandoval's step-father reported to the
20 OPD that Sandoval had been kidnapped and was being held for ransom in Tijuana,

1 Mexico. The step-father stated that he had received demands to pay \$30,000 for the
2 release of Sandoval for a drug debt that she owed. Later that day, OPD contacted
3 the FBI to request their assistance in the kidnapping investigation. FBI Special
4 Agent Murray arrived at the scene at approximately 1:45 pm and was briefed on
5 OPD's investigation. Agent Murray was informed of the shooting, the threatening
6 note, and El Primo's statements to Burton. *Id.* 24-26. Agent Murray was also told
7 by OPD that "El Primo" was a known drug trafficker. *Id.* at 45. After speaking
8 with OPD, Special Agent Murray identified Burton as a likely "associate" of
9 Sandoval. *Id.* at 11-12, 27. As a result of what he learned, Murray placed a look out
10 in the TECS system (Treasury Enforcement Communications System) for Burton,
11 to request that she be stopped upon any attempted entry to the United States. *Id.* at
12 26-27.

13 **B. Burton is Questioned by the FBI**

14 On February 20, 2016, at approximately 10:13 pm, Burton entered the
15 United States from Mexico through the San Ysidro point of entry. Burton Decl.,
16 ECF No. 14-2 at ¶ 2. Based on the TECS alert requested by FBI Special Agent
17 Murray, Burton was referred to secondary inspection. At secondary inspection,
18 Burton was removed from her car, handcuffed, and escorted into the security
19 office. *Id.* ¶¶ 6-7. Upon arriving at the security office she was subjected to a pat-
20 down search. During the search, two small personal-use baggies of

1 methamphetamine were found on her person. *Id.* ¶¶ 11-12. Burton was then seated
2 on a bench and her ankle was shackled to the bench. *Id.* ¶ 13. While she was
3 shackled to the bench, Customs and Border Protection (“CBP”) agents continued
4 to search her car. *Id.* ¶ 15. In the course of the search, the agents found marijuana
5 in a lock box in her car. *Id.* ¶ 16. After Burton had been in the security office for
6 approximately one hour, agents confronted her with the marijuana they had found.
7 *Id.*

8 Around midnight on February 21, 2016, Burton was unshackled from the
9 bench, and escorted to an interview room in the security office. FBI Special Agents
10 Murray and Brandon Cagle arrived at the San Ysidro Port of Entry just after
11 midnight. Murray Decl. at ¶ 5, ECF No. 20-1. Before interviewing Burton, Agent
12 Murray spoke with Customs and Border Protection officers who informed him
13 that, during a pat-down of Burton, the officers had discovered a personal-use
14 amount of methamphetamine on Burton’s person as well as some marijuana in a
15 lockbox in her car. *Id.* The officers told Murray that Burton was not under arrest
16 and that the seizure of the drugs would be handled administratively, not criminally.
17 *Id.* The officers also told Murray that Burton would only be fined, and then
18 processed out, after the interview was completed. *Id.*

19 At around 12:15 am, FBI Special Agents Murray and Cagle entered the
20 interview room in plain clothes and without any visible arms. Burton was not

1 handcuffed or otherwise restrained during the interview. *Id.* The demeanor of the
2 agents was calm and professional. *Id.* ¶ 7. The agents did not give *Miranda*
3 warnings to Burton prior to the interview. *Id.* ¶ 6.

4 At the beginning of the interview, Agent Murray asked Burton if she knew
5 why the FBI agents were there. *Id.* ¶ 8. Burton responded that she thought they
6 were there due to the drugs found on her and in her car. *Id.* Agent Murray informed
7 Burton that they were not there to talk about the drugs and that they were not
8 concerned about the drugs. *Id.* Instead, Agent Murray indicated that he wanted to
9 talk to her about her friend Zayki Sandoval. Agent Murray informed Burton that
10 they were only interested in Sandoval's safe return to the United States.

11 For her part, Burton states that the FBI agents, at the beginning of the
12 interview, "told [her] that they knew what [she] had been doing and that they did
13 not want to talk to [her] about that." Burton Decl. at ¶ 22, ECF No. 14-2. Burton
14 understood that the agents knew that she had been involved with drug smuggling.
15 *Id.* She also acknowledged that the agents had told her that what she had done was
16 not important and that they only wanted the safe return of Sandoval. *Id.*

17 Because the agents knew little about the events that had transpired leading
18 up to the purported kidnapping of Sandoval, the interview was led largely by
19 Burton volunteering information about what had taken place. Murray Decl. at ¶ 9,
20 ECF No. 20-1. Based on Burton's statements, the agents asked follow-up questions

1 in order to get a better handle on what had transpired. Transcript, ECF No. 25 at
2 12. According to the agents, their purpose in interviewing Burton was to learn as
3 much as they could about Sandoval, her location, who was holding her, and any
4 other information that could be passed on to the Mexican law enforcement officers
5 working on the case. *Id.* at 12-13. During the interview, however, Burton also
6 provided information about a delivery of large quantities of methamphetamine that
7 she had brought to a hotel room in San Marcos, California.

8 At some point during the interview, Agent Murray informed Burton that she
9 was not under arrest and was not going to be arrested for the drugs found on her
10 that night. Murray Decl. at ¶ 10, ECF. No. 20-1. During the evidentiary hearing,
11 Agent Murray testified that he recalled advising Burton of these facts towards the
12 end of the interview and could not say if he had done so earlier. Transcript, ECF
13 No. 25 at 48. It was also towards the end of the interview when Agent Murray
14 informed Burton that he had talked to CBP and that Burton would be
15 administratively processed out, and that she would be free to leave the port of
16 entry. *See id.*

17 The interview lasted approximately 45 minutes to 1 hour. *Id.* at 10. Burton
18 did not appear to be under duress or under the influence of drugs or alcohol, and
19 appeared coherent. Transcript, ECF No. 25 at 14-15. According to Agent Murray,
20 Burton never asked about an attorney during the interview and that if she had, the

1 questioning would have stopped. Murray Decl. at ¶ 11, ECF No. 20-1; Transcript,
2 ECF No. 25 at 14 & 41. Burton, on the other hand, claims that she asked whether
3 she should have an attorney present prior to the questioning. Burton Decl. ¶ 28,
4 ECF No. 14-2.

5 Burton has declared that she did not feel free to leave the interview. *Id.* ¶ 23.
6 She was alone in the room with the agents and immediately prior to the
7 questioning had been shackled to a bench. *Id.* Her identification, car, and keys
8 were in the possession of agents. *Id.* Burton further declared that she believed that
9 she needed to speak with the agents or she would not be allowed to leave. *Id.* ¶ 24.
10 She did not understand that any statements she made could later be used against
11 her. *Id.* ¶ 26. She believed that if she was cooperative with the FBI agents and that
12 if she assisted them with the return of Sandoval, her statements would not be used
13 against her. *Id.* ¶ 27.

14 Once the interview concluded, Burton returned to the security bench for
15 processing of paperwork. After the administrative process was complete, Burton's
16 keys and wallet were returned to her, she was released, and she left the security
17 office and went on her way. After the interview, Agent Murray asked for the TECS
18 alert that he had requested for Burton to be taken down. Murray Decl. ¶ 13, ECF
19 No. 20-1. He did not open an investigation into Burton based on her statements
20 about methamphetamine distribution. *Id.*

1 A few days after the interview, Burton contacted Murray to report that
2 Sandoval had been released, but was still in Mexico. Transcript, ECF No. 25 at 6-
3 7. Then, on February 27, 2016, Burton informed Special Agent Murray that
4 Sandoval had returned to the United States successfully. *Id.* After confirming that
5 Sandoval was safely in the United States, the investigation wound down. *Id.* at 18.

6 **C. Arrest**

7 On March 2, 2016, Burton entered the United States through the San Ysidro
8 Port of Entry as the driver and sole occupant of a Ford Focus. Burton Decl. ¶¶ 1-2.
9 The CBP officers referred the vehicle to secondary inspection based on a TECS
10 alert different than the one requested by the FBI. *See* Gov't Opp., ECF No. 20 at 2.
11 Thereafter, a CBP Canine Enforcement Officer performed a canine sniff of the
12 vehicle, which produced an alert to the rear seat of the car. *Id.* A CBP officer
13 partially pulled the felt from the rear seat and observed what appeared to be the
14 edge of a vacuumed sealed package. *Id.* The vehicle was then screened using a Z-
15 Portal x-ray which revealed anomalies in the rear quarter panels and rear backseats
16 of the car. *Id.* Following an inspection of the inside of the car, officers discovered
17 and seized 25 packages containing approximately 17.28 kilograms (38 pounds) of
18 methamphetamine. *Id.* at 3.

19 **D. Procedural History**

20 On March 2, 2016, Burton was charged in a complaint with one count of

1 importation of methamphetamine. On March 29, 2016, a single count information
2 was filed in case number 16cr0626-GPC, charging that Burton did “knowingly and
3 intentionally import a mixture and substance containing a detectable amount of
4 methamphetamine” Burton entered a not guilty plea to the information. On
5 June 1, 2016, the government filed the current indictment. ECF No. 1. Count 1
6 charges Burton with conspiracy to distribute 500 grams or more of a mixture and
7 substance containing methamphetamine. Count 2 charges that on March 2, 2016,
8 Burton imported 10.85 kilograms of methamphetamine.

9 DISCUSSION

10 A. The Need for *Miranda* warnings

11 Burton moves to suppress her February 20th statement made to Special
12 Agents Murray and Cagle because it was the product of custodial interrogation and
13 was not preceded by *Miranda* warnings. Burton argues that she was placed in
14 custody when agents shackled her to a bench in a locked security office,
15 confronted her with methamphetamine and marijuana found in her possession,
16 escorted her to the interview room, maintained custody and control of her driver’s
17 license and car, and then placed her in a room with two FBI agents who proceeded
18 to question her. She continues that the questioning of the FBI agents constituted
19 interrogation based upon the Government’s knowledge of her connection to illicit
20 drug activities.

1 The Government opposes, asserting that Burton was not in custody because
2 she was going to be administratively processed for possessing user-quantities of
3 drugs and because the FBI agents were merely soliciting her assistance in locating
4 Sandoval, the victim of a kidnapping, not interrogating her within the meaning of
5 *Miranda*.

6 **1. Custody**

7 “An officer's obligation to administer *Miranda* warnings attaches . . . “only
8 where there has been such a restriction on a person's freedom as to render him ‘in
9 custody.’”” *Stansbury v. California*, 511 U.S. 318, 322 (1994) (*per curiam*)
10 (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*per curiam*)). Whether a
11 suspect is in custody turns on whether there is a “‘formal arrest or restraint on
12 freedom of movement’ of the degree associated with a formal arrest.” *California v.*
13 *Beheler*, 463 U.S. 1121, 1125 (1983) (*per curiam*) (quoting *Mathiason*, 429 U.S. at
14 495). This inquiry requires a court to examine the totality of the circumstances
15 from the perspective of a reasonable person in the suspect's position, *see Berkemer*
16 *v. McCarty*, 468 U.S. 420, 442 (1984), and focuses on the objective circumstances
17 of the interrogation, not the subjective views of the officers or the individual being
18 questioned, *Stansbury*, 511 U.S. at 323. As such, the court must determine whether
19 “the officers established a setting from which a reasonable person would believe
20 that he or she was not free to leave.” *United States v. Beraun–Panez*, 812 F.2d 578,

1 580 (9th Cir. 1987), *modified by* 830 F.2d 127 (9th Cir. 1987). To conduct this
2 analysis, five non-exhaustive factors are considered: “(1) the language used to
3 summon the individual; (2) the extent to which the defendant is confronted with
4 evidence of guilt; (3) the physical surroundings of the interrogation; (4) the
5 duration of the detention; and (5) the degree of pressure applied to detain the
6 individual.” *United States v. Kim*, 292 F.3d 969, 974 (9th Cir. 2002).

7 In the instant case, Burton was told to get out of her car, handcuffed, and
8 escorted into the security office where she was subjected to a pat-down search,
9 which resulted in the seizure of two baggies of methamphetamine from her person.
10 Burton was then seated on a bench and her ankle was shackled to the bench for
11 more than one hour. A car search revealed marijuana in a lock box in her car and
12 Burton was confronted with the marijuana. Immediately prior to the interview,
13 Burton was unshackled from the bench, and escorted to an interview room in the
14 security office.

15 The above demonstrates that the CBP officers used commands to summon
16 Burton; confronted her with the methamphetamine and marijuana that was found
17 on her person and in her car; and placed significant restraints on her freedom. Until
18 the time that the FBI agents arrived, these happenings would have caused a
19 reasonable person to believe that they were being subjected to more than the
20 “temporary detention occasioned by border crossing formalities.” *United States v.*

1 *Butler*, 249 F.3d 1094, 1100 (9th Cir. 2001).¹

2 Meanwhile, the Government focuses on the events that transpired after the
3 FBI agents contacted Burton and argues that those facts weigh heavily against a
4 finding of custody. The Government points out that the FBI agents did not confront
5 Burton with the drugs found on her person and in her car and, in fact, that they had
6 told her that they were not interested in those drugs. In addition, the actual
7 interview took place in an interview room wherein Burton was not handcuffed or
8 shackled. The Government also notes that the agents did not pressure Burton.

9 The parties have compartmentalized their inquiries regarding the
10 circumstances bearing on custody. Defendant focuses on the actions prior to the
11 interview and the Government focuses on those that occurred after Burton was
12 accompanied to the interview room. Yet in considering the totality of the
13 circumstances relating to the detention, the Court must necessarily consider all of
14 the facts from the time that Burton was detained based on the TECS alert until the
15 time of the interview. As of the time that the FBI agents had arrived at the port of
16 entry, the objective facts demonstrate that Burton was in custody. The remaining

17
18 ¹ The Government argues that detention during routine searches at the border are considered
19 reasonable within the meaning of the Fourth Amendment. *United States v. Espericueta-Reyes*,
20 631 F.3d 616, 622 (9th Cir. 1980) (“so long as the searches are conducted with reasonable
dispatch and the detention involved is reasonably related in duration to the search, the detention
is permissible under the Fourth Amendment.”). The Court disagrees that Burton’s detention was
routine. Here, the search of Burton’s person and car had long occurred by the time that the
interview with the FBI occurred. The additional detention to interview Defendant, therefore, was
not supported as a border search.

1 issue, thus, is whether the actions of the FBI agents removed Burton from the
2 coercive environment that had been created such that a reasonable person would
3 have believed they were not free to leave at the time of the FBI interview.

4 Relying on *Mathiason*, the Government asserts that Burton was not
5 restrained because she was told she would be free to leave after she was
6 administratively processed. In *Mathiason*, Defendant was questioned in a closed
7 room in the office of a law enforcement agency. *See* 429 U.S. at 493-94. Although
8 taking place in an admittedly “coercive environment,” the questioning, there, was
9 found not to amount to custodial interrogation because the defendant had been told
10 that he was not under arrest and that he was free to leave, and thereafter he left
11 without hindrance. *See id.* at 494-95.

12 The Government additionally relies on *United States v. Crawford*, 372 F.3d
13 1048 (9th Cir. 2004) (en banc) to support their position. In *Crawford*, the
14 defendant’s home was subjected to a parole search and, thereafter, an FBI agent
15 asked defendant whether he, the defendant, would voluntarily travel to the FBI
16 offices for an interview. At the FBI offices, Crawford was told that he was not
17 under arrest and that he was free to go. The defendant was, moreover and in fact,
18 returned home at the end of the interview, without being arrested. The Ninth
19 Circuit observed in *Crawford* that “[b]eing aware of the freedom to depart, and in
20 fact departing after questioning at a law enforcement office, suggest that the

1 questioning was noncustodial.” *Crawford*, 372 F.3d at 1060. The court, therefore,
2 concluded that Crawford’s interview at the FBI offices was noncustodial because
3 Crawford had been aware of the freedom to depart and had, in fact, departed after
4 questioning at the law enforcement office.

5 Here, the record does not support the Government’s suggestion that Burton
6 was aware that she would be administratively processed, because that information
7 was not communicated to Burton at the outset of the interview, as was the case in
8 *Crawford*. Instead, Agent Murray testified that he recalled advising Burton that she
9 would not be arrested near the end of the interview, and he could not recall “if it
10 was done before that.” Transcript, ECF. No. 25 at 48.

11 The Supreme Court has recognized that an officer’s views concerning the
12 nature of an interrogation, or beliefs concerning the potential culpability of the
13 individual being questioned, may be one among many factors that bear upon the
14 assessment of whether an individual was in custody, but only if the officer’s views
15 or beliefs were somehow manifested to the individual under interrogation and
16 would have affected how a reasonable person in that position would perceive his or
17 her freedom to leave. *Stansbury*, 511 U.S. at 325-26. The Government points out
18 that the agents made clear to Burton that they were not interested in questioning
19 her about the personal-use amounts of drugs that she possessed and that they were
20 only investigating the whereabouts of her friend. Moreover, she was not

1 handcuffed or told she was under arrest.

2 Notwithstanding, the key issue before the Court is not just whether or not the
3 setting Burton was interviewed in was coercive, but whether there was a sufficient
4 break from the custodial setting that had already been established. While *Crawford*
5 demonstrates that subsequent events can change the custodial status of an
6 individual, the Government has failed to establish that such a change had occurred
7 at the time that the FBI interview commenced. Unlike *Crawford*, there was no
8 temporal break or change in location, here, to let Burton know that the custodial
9 detention had ended. Burton was not told that she was free to leave at the
10 beginning of the interview. By the time that the FBI agents had arrived, Burton had
11 already been detained for two hours. Because the officers did nothing to establish a
12 setting from which a reasonable person could believe that they were free to leave
13 once the interview began, Burton's custody remained continuous throughout her
14 time at the port of entry.

15 The FBI agents could have established a clean break from Burton's previous
16 custodial situation if they had advised Burton at the outset that she was not under
17 arrest and that she would be administratively processed and released. Instead, the
18 Government relies on the fact that Burton was not placed under arrest, that her
19 restraints were removed at the time of the interview, and that she knew that the FBI
20 agents were not interested in the user-quantity of drugs that Burton had possessed,

1 to demonstrate that she was not in custody. Ultimately, however, the Court
2 concludes that these facts do not establish a sufficient break from the earlier
3 detention from the perspective of a reasonable person in Defendant's position.
4 Accordingly, the Court concludes that Burton was in custody at the beginning of
5 the FBI interview prior to any questioning.

6 **B. Interrogation**

7 The Fifth Amendment provides that no "person . . . shall be compelled in
8 any criminal case to be a witness against himself." U.S. Const. amend. V. In
9 *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court concluded that
10 "without proper safeguards the process of in-custody interrogation of persons
11 suspected or accused of crime contains inherently compelling pressures which
12 work to undermine the individual's will to resist and to compel him to speak where
13 he would not otherwise do so freely." *Id.* at 467.

14 A primary purpose of *Miranda v. Arizona* was "to give concrete
15 constitutional guidelines for law enforcement agencies and courts to follow." 384
16 U.S. at 441-42. With that end in mind, the Supreme Court has observed that "[o]ne
17 of the principal advantages' of *Miranda* is the ease and clarity of its application."
18 *Berkemer*, 468 U.S. at 430.

19 The Court's research of this matter did not result in any case similar to the
20 present one. Certainly, this case does not involve the archetypal *Miranda*-like

1 situation where law enforcement officers are interviewing someone that they
2 believe has committed a crime and are asking questions regarding the investigated
3 crime. What is more, those cases in the Ninth Circuit that have addressed the
4 “interrogation” issue outside of the typical *Miranda* scenario, do so in the context
5 of immigration cases where undocumented detainees are asked routine
6 biographical information that can become relevant to prosecution under the
7 immigration laws.

8 In one immigration case, the Ninth Circuit framed the test to determine
9 whether questioning is “interrogation” within the meaning of *Miranda* as whether
10 “under all of the circumstances involved in a given case, the questions are
11 ‘reasonably likely to elicit an incriminating response from the suspect.’” *United*
12 *States v. Mata–Abundiz*, 717 F.2d 1277, 1278-79 (9th Cir.1983) (quoting *United*
13 *States v. Booth*, 669 F.2d 1231, 1237 (9th Cir.1981) (quoting *Rhode Island v. Innis*,
14 446 U.S. 291, 301 (1980) (dialogue between the two officers to which no response
15 from the respondent was invited did not constitute “interrogation.”)).

16 In *Mata–Abundiz*, an Immigration and Naturalization Service (“INS”)
17 criminal investigator questioned Mata while he was in jail on state criminal
18 charges for possession of a firearm by an illegal alien, among other crimes. 717
19 F.2d at 1278. The INS investigator characterized his jail visit as a routine civil
20 investigation. *Id.* During that visit, he asked Mata his citizenship and did not

1 administer any *Miranda* warnings. *Id.* Mata responded by stating that he was a
2 citizen of Mexico. *Id.* The investigator then went to his office and made further
3 inquiries into Mata's immigration status. *Id.* Within three hours, he returned to the
4 jail with a warrant for Mata's arrest. A few days later, Mata was charged with the
5 federal offense of possession of a firearm by an illegal alien. *Id.* Mata's unwarned
6 statement to the investigator was the only evidence presented at trial to show his
7 alienage. *Id.* Under these facts, the Ninth Circuit held that the INS investigator's
8 questioning of Mata at the jail amounted to an "interrogation" under *Miranda*,
9 because the investigator had reason to know that his questions were likely to elicit
10 incriminating information relating to a federal prosecution for illegal possession of
11 a firearm by an alien. *Id.* at 1279.

12 Here, the FBI agents knew or believed that (1) Sandoval was a drug
13 trafficker; (2) that Sandoval was kidnapped by drug traffickers; (3) that the same
14 day that shots were fired at Sandoval's house, Burton had been accused by a drug
15 trafficker of having his "stuff" and that she had "picked it up." These facts show
16 that FBI Special Agent Murray had reason to believe that Burton possessed
17 distribution quantities of drugs and was a drug associate of Sandoval. Moreover,
18 rather than asking specific questions regarding the whereabouts of Sandoval, Agent
19 Murray asked open-ended questions and follow-up questions about Sandoval
20 which were likely to elicit an incriminating response regarding Burton's and

1 Sandoval's drug trafficking activities leading up to Sandoval's kidnapping.

2 On the other hand, it is clear that at the time the agents interviewed Burton
3 they did not intend to use the coercive nature of confinement to extract a
4 confession. The facts show that: (1) Burton was not a target of the kidnapping
5 investigation; (2) the FBI was not investigating Burton or Sandoval for drug
6 trafficking; (3) the FBI was not coordinating with CBP officers in any drug
7 trafficking investigation; (4) the sole purpose of the interview was to develop
8 information on the whereabouts of Sandoval; (5) the purpose was clearly
9 communicated to Burton; (6) true to their word, the FBI did not investigate Burton
10 or pass on admissions to CBP officers; (7) the questions posed were not
11 accusatory; and (8) the FBI agents did not expect Burton to cross drugs into the
12 United States ten days later or expect her responses to questions at the February 20
13 interview to incriminate her in a prosecution investigated by a separate agency.

14 Cases involving questioning during civil tax investigations are instructive in
15 sorting through these competing facts. In *United States v. Mathis*, 391 U.S. 1, 4
16 (1968), the Government sought to escape application of *Miranda* warnings on two
17 grounds: (1) that the questions asked were part of a routine tax investigation where
18 no criminal proceedings might even be brought, and (2) that the defendant had not
19 been put in jail by the officers questioning him, as the defendant was being held on
20 an entirely separate offense. The Supreme Court, however, found that these

1 differences were too minor and shadowy to justify a departure from the well-
2 considered conclusions of *Miranda* with reference to warnings to be given to a
3 person held in custody. Stated differently, the *Mathis* court found nothing in the
4 *Miranda* opinion called for a curtailment of the warnings to be given persons under
5 interrogation by officers based upon the reason why the person was in custody. *Id.*
6 at 4-5.

7 Likewise, here, the fact that the FBI agents were not investigating Burton
8 and were asking her questions as part of a routine kidnapping investigation would
9 not alone make *Miranda* inapplicable.

10 In deciding whether particular police conduct is interrogation, the Supreme
11 Court has observed that “we must remember the purpose behind our decisions in
12 *Miranda* and *Edwards*: preventing government officials from using the coercive
13 nature of confinement to extract confessions that would not be given in an
14 unrestrained environment.” *Arizona v. Mauro*, 481 U.S. 520, 529-30 (1987). In
15 *Mauro*, in concluding that the government had not interrogated the defendant, the
16 Supreme Court observed: “Mauro was not subjected to compelling influences,
17 psychological ploys, or direct questioning. Thus, his volunteered statements cannot
18 properly be considered the result of police interrogation . . . The government
19 actions in this case do not implicate this purpose in any way.” 481 U.S. at 529-30.

20 Yet in the instant case, unlike in *Mauro*, Burton was subjected to the

1 coercive nature of confinement and was subjected to questioning that was likely to
2 produce incriminating responses. The admissions were the product of government
3 actions that squarely implicated the purposes of *Miranda*. Accordingly, under all of
4 the circumstances of the case, the Court concludes that the FBI agents
5 “interrogated” Burton within the meaning of *Miranda* because the agents posed
6 open-ended questions that were reasonably likely to elicit an incriminating
7 response from her.

8 **C. Voluntariness of Burton’s Statement**

9 The Court must assess the voluntariness of an admission under the “totality
10 of all the circumstances—both the characteristics of the accused and the details of
11 the interrogation.” *Mickey v. Ayers*, 606 F.3d 1223, 1233 (9th Cir. 2010) (quoting
12 *Dickerson v. United States*, 530 U.S. 428, 434 (2000)). An involuntary confession
13 violates the Due Process Clause of the United States Constitution and is
14 inadmissible. *See Colorado v. Connelly*, 479 U.S. 157, 168 (1986). In determining
15 whether a statement is “voluntarily made . . . the finder of fact must examine the
16 surrounding circumstances and the entire course of police conduct with respect to
17 the suspect in evaluating the voluntariness of his statements.” *Oregon v. Elstad*,
18 470 U.S. 298, 318 (1985).

19 Section 3501(b) of 18 U.S.C. sets forth five factors which a court must
20 review to determine whether a statement is voluntarily made. These factors

1 include: (1) the time elapsing between arrest and arraignment of the defendant; (2)
2 whether the defendant knew the nature of the offense with which she was charged
3 at the time of making the confession; (3) whether the defendant was aware that she
4 was not required to make any statement and that any such statement could be used
5 against her; (4) whether the defendant had been advised of her right to counsel; and
6 (5) whether counsel was present at the time of defendant's confession. 18 U.S.C.
7 § 3501(b); *United States v. Shi*, 525 F.3d 709, 730 (9th Cir.2008). No one factor is
8 necessarily conclusive on the issue of the voluntariness of a confession. *Id.*

9 With respect to the § 3501(b) factors, the Court notes, first, that there was no
10 delay between arrest and arraignment since Defendant was not arrested following
11 her detention and FBI interview. Second, Burton was informed by the agents
12 during the interview that she would not be criminally charged for possessing drugs
13 and, instead, that she would be administratively processed.

14 Meanwhile, Burton was not given *Miranda* rights, including necessarily the
15 right to remain silent or the right to the presence of counsel during the interview,
16 and no attorney was present when she gave her statement to the agents.
17 Nonetheless, there is also no evidence that any of the statements made by Burton
18 were extracted by use of threat, violence, or psychological pressure. Instead, the
19 statements were provided so as to assist the FBI in a kidnapping investigation.

20 Burton asserts that the various factors here — the handcuffs and shackles,

1 the isolation, and the threat of future prosecution — show that Burton’s statements
2 were not “the product of an essentially free and unconstrained choice.” *Collazo v.*
3 *Estelle*, 940 F.2d 411, 416 (9th Cir. 1991) (quotations omitted). Instead, she claims
4 that the FBI infused the interrogation with compulsion that propelled her to make
5 the February 20th statements.

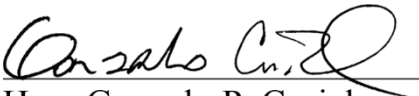
6 While the Court finds that Burton was in custody at the time she was
7 interviewed, once Burton was placed in the interview room she was no longer
8 shackled. In addition, she was not subjected to violence and the agents’ demeanors
9 were calm during the questioning and were not coercive. Burton was also not
10 subjected to any coercive pressure in that the FBI agents did not accuse her of any
11 criminal activity that they were investigating or had any interest in that activity
12 which she had committed. Accordingly, the Court finds that Burton’s statements
13 were voluntary.

14 CONCLUSION

15 For the foregoing reasons, Defendant’s Motion to Suppress, ECF No. 14, is
16 hereby **GRANTED**.

17 **IT IS SO ORDERED.**

18 Dated: January 5, 2017

19 
20 Hon. Gonzalo P. Curiel
United States District Judge